

S-1-CR2010000218

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

RORY QUENTIN MOORE

Transcript of the Decision of The Honourable Justice J.E.
Richard, at Yellowknife in the Northwest Territories, on
May 19th A.D., 2011.

APPEARANCES:

Ms. D. Vaillancourt: Counsel for the Crown
Mr. J. Chadi: Counsel for the Accused
(appearing via teleconference)

Charges under s. 5(2) Controlled Drugs and Substances Act

1 THE COURT: This accused, Rory Quentin
2 Moore, faces serious charges of possession of
3 cocaine for the purpose of trafficking and
4 possession of marijuana for purposes of
5 trafficking. He is presumed innocent of these
6 charges and he is a person with no criminal
7 record. He has been detained in custody since
8 the date of his arrest in June, 2010, so
9 approximately 11 months.

10 He elected trial by Judge and jury in this
11 Court. A preliminary inquiry was held in
12 November, 2010, following which he was
13 committed to stand trial in this court. No
14 trial date has yet been set due to the fact
15 that the accused has requested a pre-trial
16 hearing of a Charter application he wishes to
17 put forward before his trial date is set. At
18 his request, three days of court time have
19 been set aside in August to hear his Charter
20 application, yet he has not filed his Charter
21 application as directed by the Court.

22 Today he makes application for interim
23 judicial release pending the trial of the
24 charges against him. On such an application,
25 the Rules of Court require him to file an
26 affidavit containing certain information
27 specified in the Rules of Court. He did

1 initially attempt to file an affidavit but it
2 was rejected by the clerk as being defective
3 in form. Even in its unfiled form, that
4 affidavit did not contain all of the
5 information specified by the rules. For
6 example, that affidavit did not state his
7 place of residence in the three years
8 preceding the date of the offence charged, nor
9 details of his employment in the three years
10 preceding the date of the offence charged.

11 Today he files a fresh affidavit in which
12 he provides some of the missing information.
13 In the new affidavit, he states that during
14 most of his time in Yellowknife prior to his
15 arrest in June 2010, he resided at a specific
16 address here. He also states, in the new
17 affidavit, that during 2009 and 2010 here in
18 Yellowknife, he worked for Paul McWhirter, his
19 proposed surety, but does not provide further
20 details of that employment.

21 Upon cross-examination on his new
22 affidavit by the prosecutor this morning, he
23 says it was mainly construction work and only
24 on weekends.

25 The rules also require that where
26 practical, the accused person is to provide an
27 affidavit of the proposed surety disclosing

1 that person's willingness to serve as a surety
2 and the amount for which that person is to be
3 held liable. No affidavit of surety
4 accompanied the application for judicial
5 release.

6 That particular deficiency has now been
7 corrected. Mr. McWhirter has signed a form
8 confirming his willingness to be a surety and
9 his understanding of the role of a surety. In
10 addition, Mr. McWhirter was cross-examined by
11 the prosecutor this morning on his association
12 with this accused and on his offers of
13 employment and of a residence for this accused
14 in the event that the accused obtains
15 pre-trial release.

16 Although the accused is represented by
17 capable counsel on this bail application, I am
18 told that as at this date the accused does not
19 have legal representation for the trial of
20 these charges. It is, therefore, uncertain
21 whether the pre-trial hearing scheduled for
22 August 29th, 2011 is proceeding and, if so,
23 for what purpose.

24 This is an unsatisfactory situation. The
25 accused ought to be using his energy and his
26 resources in preparing for his trial on these
27 serious charges. There is no indication on

1 this hearing that the accused is doing so. In
2 my respectful view, the public may not have
3 confidence in the judicial system if the Court
4 were to grant pre-trial release to a person
5 facing serious charges where that person, on
6 the face of it, appears to be avoiding his
7 trial.

8 On the evidence before the Court on this
9 hearing, this accused does not appear to have
10 ties to this jurisdiction or to this
11 community. When he and the other accused were
12 arrested by the police, they were en route
13 from British Columbia to Yellowknife by road
14 and the police found the drugs hidden in the
15 vehicle in which the two accused were driving
16 towards Yellowknife.

17 The accused says he has an unnamed
18 girlfriend who lives in Yellowknife but no
19 name or other details are provided.

20 In his post-release plan, he proposes that
21 he will live in a residence at 31 Larocque
22 Crescent here in Yellowknife with his
23 acquaintance Paul McWhirter, his proposed
24 surety. The evidence indicates that he has
25 known Mr. McWhirter for five years.

26 In my respectful view, the accused's ties
27 to this jurisdiction are tenuous, at best, and

1 there exists a real concern that this accused
2 is a flight risk given the serious charges he
3 is facing, given the finding of the
4 preliminary inquiry Judge that there is a
5 strong prima facie case against him, and given
6 the likely sentence he would receive if he
7 were convicted.

8 At the two show cause hearings in
9 Territorial Court in July 2010 and November
10 2010, the accused failed to show cause why his
11 detention in custody pre-trial was not
12 justified. The show cause Judge in each case
13 ordered the accused detained in custody on the
14 primary grounds and on the tertiary grounds
15 set out in section 515(10) of the Criminal
16 Code.

17 On today's application, the prosecution
18 submits that this Court ought to also order
19 the accused's continued detention on the
20 primary and tertiary grounds.

21 Dealing firstly with the primary grounds,
22 I repeat that in all of the circumstances of
23 this case, this accused is a flight risk.
24 However, I am satisfied that the Court can
25 attach appropriate conditions to his release
26 pending trial that will alleviate that risk.

27 If I were dealing with the primary grounds

1 only, I would consider ordering his release
2 upon his entering into a recognizance in the
3 amount of \$30,000 with \$15,000 cash deposit
4 and a further \$15,000 without cash deposit in
5 the name of the surety Paul McWhirter and with
6 regular reporting conditions to the RCMP in
7 Yellowknife, and other appropriate conditions
8 as to residence, curfew, et cetera.

9 With regard to the tertiary grounds, the
10 Criminal Code states that the detention of an
11 accused in custody, pending trial, is
12 justified on the tertiary grounds if it is
13 necessary to maintain confidence in the
14 administration of justice having regard to all
15 of the circumstances, including:

- 16 1. The apparent strength of the
17 prosecution's case;
- 18 2. The gravity of the offence;
- 19 3. The circumstances surrounding the
20 commission of the offence;
- 21 4. The fact that the accused is liable on
22 conviction for a potentially lengthy term of
23 imprisonment.

24 Here, on the basis of the summary provided
25 to me of the Crown allegations, the summary
26 provided to me of the evidence given at the
27 preliminary inquiry, and the characterization

1 by the preliminary inquiry Judge of a strong
2 prima facie case against the accused, I am
3 satisfied that the Crown has a strong case.

4 That the charges against the accused are
5 grave or serious almost goes without saying.

6 The illegal trafficking in drugs in recent
7 years in this jurisdiction, in particular
8 cocaine, has been like a scourge on northern
9 society and the Courts have seen many cases,
10 including many cases where the drugs are
11 brought from British Columbia into the north
12 for distribution and sale. As the Courts of
13 this jurisdiction have said over and over, the
14 illegal drug trade has wreaked havoc on the
15 social fabric of our community year after
16 year. And it is for this reason, among
17 others, that the Courts of this jurisdiction
18 have taken the position that, absent special
19 circumstances, a conviction for such serious
20 charges will invariably result in a
21 substantial term of imprisonment.

22 The circumstances surrounding the alleged
23 commission of the offences are fairly
24 straightforward.

25 It is alleged that this accused and
26 another accused stored or hid the cocaine and
27 marijuana in the interior of a black Ford

1 truck which they then drove from British
2 Columbia to Yellowknife where the drugs were
3 to be delivered and then distributed and
4 retailed in this community. The police had
5 confidential information about this
6 transportation and delivery of drugs and they
7 intercepted the truck on the highway outside
8 of Yellowknife, arrested the two accused and
9 seized the truck and the drugs.

10 As I stated earlier, there is yet no trial
11 date set and that is due to the actions or
12 inactions of the accused rather than the
13 actions or inactions of the prosecution or of
14 the Court. In my view, this is a
15 "circumstance" which I ought to take into
16 account under the tertiary grounds.

17 This accused is not represented by trial
18 counsel on this application and the accused
19 has not addressed on this application his
20 failure to follow the Court's direction
21 regarding the filing of his Charter
22 application so that his application can be
23 heard and his trial scheduled.

24 On the facts before me on this
25 application, I find that this accused has been
26 given every opportunity to put in his full
27 answer and defence to these serious charges.

1 He has failed to do so and is avoiding trial.
2 I find that this accused is placing obstacles
3 in the path of setting a trial date. I find
4 that to authorize the release of this accused
5 until his trial, in these circumstances, could
6 serve to erode the public's confidence in our
7 justice system.

8 Having said all of that, however, although
9 it may be advisable for the Court to detain
10 him to maintain confidence in our judicial
11 system, I am unable to say that it is
12 necessary to detain him in order to maintain
13 confidence in the justice system but, rather,
14 the Court can address any of this accused's
15 shortcomings in moving his case towards trial
16 and the public's confidence in the justice
17 system by separate court directions and/or
18 court orders which will require the accused to
19 meet certain deadlines and other requirements
20 in preparation for trial. So for these
21 reasons, I am unable to find that his
22 continued detention is necessary on the
23 tertiary grounds.

24 Accordingly, I order that this accused be
25 released pending trial upon entering into a
26 recognizance in the amount of \$30,000
27 comprising of \$15,000 cash deposit and a

1 further \$15,000 without cash deposit secured
2 by the surety, Paul McWhirter.

3 The conditions of the recognizance will be
4 as follows:

5 The accused is to appear before this Court
6 on May 30th at 10 a.m.

7 MR. CHADI: Your Honour, I apologize,
8 but I have to interrupt. I am sorry, sir, you
9 are coming in and out and I am just about
10 catching every second word now. Sorry to
11 interrupt you, Your Honour.

12 THE COURT: I will start again with just
13 the order that I am making. I apologize to
14 those in the room for the level of my voice
15 but this is for Mr. Chadi.

16 I order that this accused be released upon
17 entering into a recognizance in the amount of
18 \$30,000, comprised of \$15,000 cash deposit and
19 a further \$15,000 without cash deposit secured
20 by the surety Paul McWhirter.

21 The conditions of the recognizance are as
22 follows:

23 The accused is to appear before this Court
24 on May 30th at 10 a.m. and thereafter as
25 required by the Court. That should read is to
26 appear in person.

27 Secondly, the accused is to report in

1 person to the RCMP detachment in Yellowknife
2 on Monday, Wednesday, and Friday of each week
3 between the hours of 7 a.m. and 7 p.m.

4 Next, the accused is to remain within the
5 city of Yellowknife.

6 Next, the accused is to maintain a
7 residence at 31 Larocque Crescent in
8 Yellowknife and to remain in that residence
9 between the hours of 8 p.m. and 7 a.m. each
10 day.

11 Finally, the accused is to abstain from
12 communicating directly or indirectly with
13 Robert Livingstone.

14 Now, that is the gist of the order that
15 the Court is making. But before I finalize
16 it, do either counsel have any other
17 submissions with respect to the conditions of
18 the recognizance?

19 MS. VAILLANCOURT: Your Honour, and this was
20 Mr. Chadi's suggestion and I would agree,
21 given the nature of the charges that there be
22 a weapons prohibition. This was in the
23 affidavit of the accused.

24 THE COURT: Well I didn't see that there
25 was any weapons involved in the circumstances
26 but let me just try and check that affidavit.

27 I see that as being put forward as a

1 condition, Mr. Chadi. Before I leave the
2 Crown, anything further from the Crown?

3 MS. VAILLANCOURT: No, Your Honour, I think the
4 conditions that you have put forward are
5 satisfactory.

6 THE COURT: Mr. Chadi, any submissions
7 on the conditions?

8 MR. CHADI: I think I got most of your
9 conditions. I thought I had written them
10 down. Are they the ones listed in the
11 affidavit, Your Honour.

12 THE COURT: No, those are my own.

13 MR. CHADI: Okay, I leave it in your
14 hands. Any conditions that this Honourable
15 Court deems fit, this accused will abide by.

16 THE COURT: Fine, then when counsel are
17 preparing the recognizance, you can check with
18 the court reporter as to the conditions the
19 Court just listed.

20 I am now going to add to that the accused
21 is to abstain from possession of any firearms.

22 Mr. CHADI: Yes, sir.

23 THE COURT: Now, before we close court,
24 and apart from the bail order, Mr. Moore, the
25 accused, is to attend in this court on May
26 30th at 10 a.m. in person, with or without
27 counsel, and whether or not you are still in

1 custody. At that time you are to provide to
2 the Court an update:

- 3 1. On your efforts to retain counsel;
4 2. On your readiness for the court
5 application scheduled for August 29th.

6 So if there is nothing else, Mr. Clerk.

7 COURT CLERK: Your Honour, shall that
8 condition as worded just now be part of the
9 recognizance?

10 THE COURT: No, it's not part of the
11 recognizance. It'll just be in the clerk's
12 notes as a direction. And I should say for
13 the record, Mr. Moore, you understand that for
14 May 30th?

15 THE ACCUSED: Yes, yes, Your Honour.

16 THE COURT: Yes, fine, then we will
17 close court.

18 MR. CHADI: Thank you very much, Your
19 Honour.

20

21 -----

22

23

24

25

26

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Certified to be a true and accurate transcript pursuant to Rules 723 and 724 of the Supreme Court Rules,

Transcribed from the steno notes of J. MacDonald, court reporter

Lois Hewitt,
Court Reporter